Wallace, as a harbour pilot on a two-year contract commencing on March 2, 1972. Before the term expired the appellants terminated the respondent's employment from September 15, 1973 by a letter dated September 13, 1973 the first paragraph of which reads: —

"As you have been convicted in the District Court and sentenced to nine months' jail for causing the death of a farmer by negligent driving along Upper Serangoon Road on April 26, 1973 I am to inform you that the Authority has decided to terminate your service w.e.f. September 15, 1973, in accordance with para. 14(c) of your Contract of Service dated March 21, 1972."

On September 11, 1973 the respondent was convicted in a District Court on five charges, namely: —

(1) causing death by a negligent act;

(2) failing to stop after an accident;

(3) failing to report an accident;

(4) failing to render assistance; and

(5) moving his motor car No. SW.6486 without authority.

His defence against all these charges was that he was not the driver of the vehicle at the time of the accident. His appeal against the convictions was allowed by the High Court on April 17, 1974.

On November 25, 1975 the respondent commenced the present proceedings against the appellants for damages for wrongful dismissal. The defence was that the appellants were justified in terminating the respondent's employment alleging the failure of the respondent to make a report of the accident to the Police and to render any assistance as facts constituting misconduct justifying the dismissal.

At the trial of the action the appellants sought to cross-examine the respondent to substantiate their defence. The trial judge ruled that since the respondent's convictions had been set aside on appeal the appellants could not lead evidence in the civil action to prove that the respondent had failed to report the accident and to render any assistance. The trial judge further held that even if it were proved that the respondent had failed to report the accident and to render any assistance that would not amount to misconduct justifying the termination of the respondent's employment under Clause 14(c)(iii) of the Contract of Service which was relied on by the appellants. Clause 14(c)(iii) reads: —

"14(c). This agreement may, however, be determined without notice and without payment of salary in lieu thereof by the Authority in the event that:—

(i) ....

(ii) ....

(iii) the Pilot has misconducted himself in such a way as to seriously prejudice, interfere with, or affect the interests of the Authority to its detriment;"

The appellants contend before us that the trial judge was wrong in preventing the appellants from adducing evidence at the trial to prove that the respondent had failed to report the accident and to render any assistance. Counsel for the respondent concedes, and in our opinion rightly so, that the trial judge was wrong.

The other contention of the appellants is that if it were proved that the respondent had failed to report the accident and to render any assistance the appellants would be entitled under Clause 14(c)(iii) of the Contract of Service to dismiss the respondent summarily. Under Clause 14(c)(iii) misconduct justifying summary dismissal must be misconduct such as to seriously prejudice, interfere with, or affect the interests of the employer to his detriment.

The misconduct alleged against the respondent is that he was the driver of a motor vehicle involved in a hit and run accident in which a person was killed. It was misconduct outside the course of the respondent's employment as a harbour pilot. It was misconduct in no way connected with the business of the appellants who are the authority responsible for the safe navigation of vessels entering or leaving the port of Singapore. It was not misconduct incompatible with the due or faithful discharge of the respondent's duty qua his employment as a harbour pilot. It was not the kind of misconduct which could reasonably be said to seriously prejudice or interfere with or affect the interests of the appellants to its detriment.

In our opinion the trial judge was justified in holding that the respondent was entitled to succeed on the action for wrongful dismissal. The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Rodyk & Davidson; Drew & Napier.*

LOONG PHONG HOY v. PUBLIC PROSECUTOR

[C.C.A. (Wee Chong Jin C.J., Kulasekaram & Rajah JJ.) October 13, 1980]

[Singapore — Criminal Appeal No. 18 of 1978]

Misuse of drugs — Trafficking in 392.6 gms diamorphine — Statement to narcotics officer admissible in evidence — Narcotics officer not "police officer" — Appeal dismissed — Misuse of Drugs Act, 1973, ss. 3, 16 & 29 — Criminal Procedure Code, s. 121(1).

Criminal Law & Procedure — Statement made to Narcotics officer — Admissibility — Whether statement "to a police officer in the course of a police investigation" — Criminal Procedure Code, s. 121(1).

Evidence — Statement to narcotics officer — Whether admissible — Criminal Procedure Code, s. 121(1).

The appellant in this case was charged with trafficking in 392.6 gms diamorphine, an offence under section 3(a) of the Misuse of Drugs Act, 1973 and punishable under section 29 of the said Act. The evidence showed that on March 10, 1977, he arrived at the Woodlands checkpoint. He was seen by two Central Narcotics Bureau officers alighting from a bus being cleared through Immigration and Customs without being searched. He was then stopped by one of the officers who identified himself as an officer of the Bureau. The latter found two packets each wrapped up in newsprint lodged between the appellant's abdomen and the waist band of his trousers. At this juncture the appellant told the officer that he was carrying two packets of "peh hoon" (meaning diamorphine in Hokkien) and asked for forgiveness. He was arrested by the officer.

The packets were later analysed and found to contain 392.6 gms. diamorphine.

The trial judges rejected the appellant's claim that the two packets were handed to him by a friend, and that he did

not know that the packets contained diamorphine. They accepted the evidence of the prosecution that the appellant admitted at Woodlands carrying two packets of diamorphine.

At the appeal the appellant contended that the trial judges erred in law in admitting in evidence the oral statements made by the appellant to the Narcotics officer contrary to the provisions of section 121(1) of the Criminal Procedure Code.

Held, dismissing the appeal: (1) statements made by the appellant were not made "to a police officer in the course of a police investigation made under Chapter XIII of the Criminal Procedure Code";

(2) an officer of the Central Narcotics Bureau exercising any of his powers under the Misuse of Drugs Act is plainly not a police officer within the meaning of section 121 of the Criminal Procedure Code;

(3) on all the evidence before them, the trial judges were justified in finding the appellant guilty as charged.

CRIMINAL APPEAL.

N.C. Goho for the appellant.

Tan Teow Yeow (Deputy Public Prosecutor) for the prosecution.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the judgment of the Court): We dismissed the appeal of Loong Phong Hoy against his conviction by the High Court on the following charge: —

"Loong Phong Hoy, you are charged that you on or about the 10th day of March, 1977, at about 7.15 a.m. at the Woodlands checkpoint, Singapore, without being authorised by the Misuse of Drugs Act, 1973, No. 5 of 1973, or the regulations made thereunder, did traffic in a controlled drug specified under Class 'A' of Part I of the First Schedule to the Misuse of Drugs Act, 1973, No. 5 of 1973, to wit 392.6 grams diamorphine, and you have thereby committed an offence under section 3 subsection (a) of the Misuse of Drugs Act, 1973, No. 5 of 1973, and punishable under section 29 of the said Act."

We now proceed to give our reasons. The evidence at the trial was as follows. At about 7.15 a.m. on March 10, 1977 a Singapore/Johore Express bus No. SH.115 arrived from Johore Bahru at the Woodlands Checkpoint. The appellant was a passenger who had boarded the bus at Johore Bahru. He was seen by two Central Narcotics Bureau officers alighting from the bus and being cleared through Immigration and Customs without being searched. He was then stopped by one of the Central Narcotics Bureau officers, Ooi Hock Aun, who identified himself as an officer of the Central Narcotics Bureau. Noting that the appellant's midriff was bulging, Ooi Hock Aun lifted the shirt and inner singlet of the appellant and saw two packets each wrapped up in newsprint lodged between the appellant's abdomen and the waist band of his trousers. One newsprint was a Thai and the other a Chinese newsprint.

At this juncture the appellant told Ooi Hock Aun in the Hokkien dialect that he was carrying two packets of "peh hoon" and asked for forgiveness. Evidence was led that diamorphine is referred to in the Hokkien dialect as "peh hoon". Ooi Hock Aun then arrested the appellant.

The appellant was subsequently taken to the offices of the Central Narcotics Bureau where the two packets were then taken from his person. An analysis of the contents of the two packets showed that they contained diamorphine totalling 392.6 grammes.

In his defence the appellant testified that he had arrived at Johore Bahru by bus from Bukit Mertajam at about 6.30 a.m. on March 10, 1977 with a friend, Tan Chin Nam, and after breakfast in Johore Bahru he had bought two bus tickets and boarded a Singapore/Johore Express bus with his friend. They sat at the back of the bus side by side. When the bus arrived at Woodlands Checkpoint and as the other passengers were alighting from it Tan Chin Nam asked him to keep two packets of Chinese medicine and take them through the Customs Checkpoint. His friend asked him "to smuggle them because if they were found duty would have to be paid". At first he refused but his friend told him that it was not serious. He agreed to smuggle them through Customs because they had been friends for many years and he then tucked the two packets at his waist. He did this when the other passengers were getting down from the bus.

The trial judges did not believe the appellant's evidence. They found the appellant was an evasive witness who contradicted himself under cross-examination. They rejected his claim that the two packets were handed to him by a friend, Tan Chin Nam, and that he did not know that the packets contained diamorphine. They accepted the evidence of the prosecution that the appellant admitted at Woodlands carrying two packets of diamorphine.

At the appeal it was contended on the appellant's behalf that the trial judges erred in law in admitting in evidence the oral statements made by the appellant to the Narcotics officer contrary to the provisions of section 121(1) of the Criminal Procedure Code which reads as follows: —

"121.—(1) Save as herein provided, no statement made by any person to a police officer in the course of a police investigation made under this Chapter shall be used in evidence other than a statement that is a written statement admissible under section 140."

We rejected this contention as the statements made by the appellant were not made "to a police officer in the course of a police investigation made under [Chapter XIII] of the Criminal Procedure Code." An officer of the Central Narcotics Bureau exercising any of his powers under the Misuse of Drugs Act is plainly not a police officer within the meaning of section 121 of the Criminal Procedure Code. In any event, having regard to the presumption under section 16(2) of the Misuse of Drugs Act and the trial judges' total rejection of the appellant's evidence, the appellant's statements, even if they were improperly admitted, did not, in our judgment, occasion a failure of justice.

The other contention raised on behalf of the appellant was that the trial judges erred in holding that the appellant knew that the contents of the two packets wrapped in newsprint contained diamorphine. We rejected that contention as there was ample evidence before the trial judges to support their finding. Apart from the appellant's own admission, the circumstances under which the two packets were carried by him through the Customs counter at Woodlands were such that the proper inference was that he knew the nature of their contents. We agreed with the trial judges that his defence that he was given the two packets by a friend who was travelling with him from

Bukit Mertajam to Singapore who told him that the contents were Chinese medicine was "an incredible one".

Finally we were in no doubt that on all the evidence before them the trial judges were justified in finding the appellant guilty as charged and for all these reasons we dismissed the appeal.

Appeal dismissed.

Solicitors: *N.C. Goho & Co.*

TAN ANNA v. LAWRENCE AU POH WENG

[A.C.J. (Kulasekaram J.) May 6, 1981]

[Singapore — District Court Civil Appeal No. 13 of 1975]

Family Law — Maintenance order — Petition for divorce — Finding by High Court that parties were not married — Rescission of maintenance order — Women's Charter (Cap. 47), ss. 60 & 62(1).

In this case in January 1973 by a maintenance order made under section 60(1) of the Women's Charter by a Magistrate's Court, the respondent was ordered to pay the appellant a monthly maintenance of $150 until the order was varied or discharged according to law. In March 1973 the respondent presented a petition to the High Court for divorce against the appellant and on August 2, 1974 the court decided that it had no jurisdiction to grant a divorce on the grounds that the parties were not married. In December 1974 the respondent made an application to a Magistrate's Court to rescind the maintenance order on the ground that the High Court in the divorce proceedings had found that the parties were not married to one another.

Held: the finding by the High Court that the parties were not married was sufficient ground to satisfy a Magistrate's Court to act under section 62(1) to rescind a maintenance order made under section 60(1).

DISTRICT COURT APPEAL.

K.S. Rajah (Director of Legal Aid) for the appellant.

Dr. Thio Su Mien (*Sia Moon Joon* with her) for the respondent.

Cur. Adv. Vult.

Kulasekaram J.: In January 1973 by a maintenance order made under section 60(1) of the Women's Charter (Cap. 47) by a Magistrate's Court, the respondent Lawrence Au Poh Weng was ordered to pay monthly to the appellant Tan Anna $150 from February 1, 1973 for the appellant's maintenance until the order is varied or discharged according to law.

In March 1973 the respondent presented a petition to the High Court for divorce against the appellant. On August 2, 1974 after hearing the parties D'Cotta J. decided that the High Court had no jurisdiction to grant a divorce on the ground that the parties were not married and accordingly made no order on the petition.

In December 1974 the respondent made an application to a Magistrate's Court under section 62(1) of the Women's Charter to rescind the maintenance order on the ground that the High Court in the divorce proceedings had found that the parties were not married to one another. On March 25, 1975, after hearing the parties the Magistrate rescinded the maintenance order as he was satisfied that the finding of the High Court that the parties were not married was sufficient good cause within the meaning of section 62(1) of the Women's Charter for him to discharge the maintenance order.

The appellant Tan Anna now appeals. The result depends on the true construction of section 60(1) and section 62(1) of the Women's Charter. Section 60(1) reads: —

"60.—(1) Any married woman whose husband —

(a) has been convicted of any offence under Chapter XVI of the Penal Code against her or any of her children;

(b) has deserted her;

(c) has neglected to provide reasonable maintenance for her and her children whom he is liable to maintain;

(d) has treated her or any of her children with cruelty;

(e) is a habitual drunkard; or

(f) is living in adultery with another woman,

may apply to a District Court or Magistrate's Court and such court on due proof thereof may order the husband of such married woman to make a monthly allowance for her maintenance in proportion to his means as to the court seems reasonable."

Section 62(1) reads: —

"62.—(1) On the application of any person receiving or ordered to pay a monthly allowance under this Part and on proof of a change in the circumstances of such person, his wife or child, or for other good cause being shown to the satisfaction of the court, the court by which such order was made may rescind the said order or may vary it as it deems fit."

Section 60(1) deals with the status of marriage. The expressions used are "married woman" and "whose husband". Section 62(1) also deals with the status of marriage. It deals with a change of circumstance of a person who has been ordered to pay maintenance under section 60(1) to his "wife" and confers jurisdiction on a Magistrate to rescind a maintenance order for good cause shown to the satisfaction of the court.

In the present case the High Court, in divorce proceedings in which the appellant and respondent are the parties, has held that they were not married. In my judgment that finding is sufficient good cause to satisfy a Magistrate's Court for it to act under section 62(1) to rescind a maintenance order made under section 60(1). It is plain that the foundation for the making of a maintenance order under section 60(1) is that the appellant is married to the person against whom she is seeking an order for maintenance.

Accordingly, the appeal must be dismissed with no order as to costs.

Appeal dismissed.

Solicitors: *Chor Pee & Co.*